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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH ALAN DELLACASA,

Defendant and Appellant.

C084950

(Super. Ct. No. 15F03632)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Having reviewed the record as required by *Wende*, we affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

FACTUAL AND PROCEDURAL BACKGROUND

In 2015, the People charged defendant Joseph Alan Dellacasa with possession of methamphetamine (Health & Saf. Code, § 11370.1, subd. (a)), possession of methamphetamine for the purpose of sale (Health & Saf. Code, § 11378) while armed

with a firearm (Pen. Code, § 12022, subd. (c)),¹ being a felon in possession of a firearm (§ 29800, subd. (a)(1)), and carrying a concealed dirk or dagger (§ 21310).

On November 18, 2015, defendant pleaded no contest to possession of methamphetamine and carrying a concealed dirk or dagger. The remaining counts apparently were to be dismissed in the interest of justice.² On November 25, 2015, the trial court sentenced defendant to four years eight months in state prison, suspended execution of the sentence, placed defendant on probation, and (as a condition of probation) ordered defendant to serve one year in a residential treatment program (the Jericho Project); defendant waived his custody credits. The court also ordered defendant to pay various fines and fees.

In July 2016, the trial court found, without a hearing, that defendant violated his probation and executed the previously suspended sentence of four years eight months. The trial court subsequently determined defendant was entitled to a hearing and recalled the sentence.

On September 28, 2016, following a hearing, the trial court found defendant violated his probation by leaving the Jericho Project. The court indicated it was willing to give defendant “one last chance.” To get that chance, however, the court advised

¹ Undesignated statutory references are to the Penal Code in effect at the time of the charged offenses.

² Neither the reporter’s transcript nor the clerk’s transcript reflect a dismissal of the remaining counts on the date of the plea. At the sentencing hearing, the court asked, “what happened to Counts Two and Three?” The prosecutor replied, “Dismissed in lieu of the negotiated sentence.” The court responded, “Dismissed IJ.” However, the clerk’s transcript does not indicate that those counts were dismissed on the date of the sentencing. In light of defendant’s plea “to the sheet” we discuss *post*, it appears that the parties contemplated the remaining counts would be dismissed at some future point in time.

defendant he would need to “plead to the sheet,” resulting in a nine-year eight-month sentence “hanging over [defendant’s] head.”

Speaking directly to defendant, the court said, “so you and I are going to be seeing each other until you’re done with this thing. And if you don’t finish it, you know I will send you to 9 years, 8 months. Because I sent you to 4 years, 8 months and only had second thoughts because your attorney persuaded me that you should have a hearing. And that hearing did persuade me that you were worthy of another chance.” The court then advised defendant that if he were to take the new plea agreement, he would be waiving his section 654 rights and would have to serve his sentence in state prison rather than county jail. Defendant acknowledged that was what he wanted to do.

Counsel subsequently clarified that if defendant pleaded no contest to all the charged offenses and waived his section 654 rights, he would be facing 10 years four months in state prison. The court advised defendant of his rights and accepted his waivers, and defendant pleaded no contest to the charged offenses to which he had not previously pled.

In accordance with the new plea agreement, the court imposed an aggregate sentence of 10 years four months and suspended execution of the sentence. The court placed defendant on five years of probation with numerous conditions, including the condition that defendant enroll in and successfully complete “the Overcomers program.” Defendant accepted the terms of his probation.

On June 16, 2017, the trial court noted defendant recently pleaded no contest to felony driving under the influence (Veh. Code, § 23152, subd. (e)), in Placer County. Accordingly, the court executed the previously suspended term, adding eight months for his conviction in Placer County, for an aggregate term of 11 years in state prison.

DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and

determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

/s/
MURRAY, J.

We concur:

/s/
HULL, Acting P. J.

DUARTE, J.